



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 3, 2022

Ms. Stacie White
Counsel for the City of Euless
Taylor, Olson, Adkins, Sralla Elam L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2022-30352

Dear Ms. White:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 975808 (ORR Nos. ORR-255-2022, ORR-265-2022, and ORR-266-2022).

The City of Euless and the Euless Police Department (collectively, the "city"), which you represent, received three requests from different requestors for information related to a specified incident. You state you will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code, social security numbers pursuant to section 552.147(b) of the Government Code, and certain information pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under section 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes court-filed documents, which are subject to section 552.022 of the Government Code. Section 552.022(a)(17) of the

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redact such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

Government Code provides for required public disclosure of “information that is also contained in a public court record[,]” unless the information is expressly made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). Although you raise section 552.108 of the Government Code for this information, this is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. We further note common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, no portion of the submitted court-filed documents may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, we will address your arguments against disclosure of the remaining information not subject to section 552.022(a)(17) of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue pertains to a pending criminal investigation or prosecution. Based on this representation, we conclude section 552.108(a)(1) is generally applicable to the information at issue. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We note, however, the information at issue includes a DIC-24 statutory warning and a DIC-25 notice of suspension. Copies of these forms were provided to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Accordingly, the DIC-24 and DIC-25 forms may not be withheld under section 552.108 of the Government Code.

Additionally, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). We note basic information includes, among other items, an arrestee’s social security number. *See* ORD 127 at 3-4. Accordingly, with the exception of the DIC-24 and DIC-25 forms, the court-filed documents we have marked, and basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). We note the first requestor has a right of access to his own date of birth pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the city must withhold the date of birth in the DIC-24 and DIC-25 forms from the second and third requestors under section 552.101 of the Government Code in conjunction with common-law privacy.

As noted above you state the city will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code. Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130. We note section 552.130 protects personal privacy. Accordingly, the first requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the city must withhold the information you have marked from the second and third requestors under section 552.130 of the Government Code.

As noted above, you state you will redact social security numbers pursuant to section 552.147(b) of the Government Code. Section 552.147(a) excepts the social security number of a living individual from public disclosure. *Id.* § 552.147(a). However, we note the first requestor has a right of access to his own social security number, and it may not be withheld from him under section 552.147. *See* Gov’t Code § 552.023(a); ORD 481 at 4. Therefore, the city may withhold the social security number within the basic information from second and third requestors under section 552.147 of the Government Code.

In summary, with the exception of the DIC-24 and DIC-25 forms, the court-filed documents we have marked, and basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. The city must withhold the date of birth in the DIC-24 and DIC-25 forms from the second and third requestors under section 552.101 of the Government Code in conjunction with common-law privacy. The city must

withhold the information you have marked from the second and third requestors under section 552.130 of the Government Code. The city may withhold the social security number within the basic information from second and third requestors under section 552.147 of the Government Code. The city must release the remaining information.³

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 975808

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

³ Although the second and third requestors state they are representatives of the United States Department of Homeland Security, neither indicates they have a right of access to the information being withheld under state or federal law. See Open Records Decision Nos. 598(1991), 583 (1990), 451 (1986).